IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 15TH FEBRUARY 2007 / 26TH MAGHA 1928

Crl.MC.No. 396 of 2007()

CC.17/1993 of ADDL.CHIEF JUDICIAL MAGISTRATE (E & O),ERNAKULAM

.....

PETITIONERS: ACCUSED NOS.1 & 3

---

1. M/S.BHARATH PLYWOOD & TIMBER
PRODUCTS (P) LTD.,
BALIAPATTAM,
CANNANORE DISTRICT.

2. ARUNKUMAR DATHANI,
S/O.HARIDAS, GORDHANDAS,
MANAGING DIRECTOR,
THE BHARATH PLYWOOD & TIMBER
PRODUCTS (P) LTD.,
BALIAPATTAM,
CANNANORE DISTRICT.

BY ADV. SRI.D.PEETHAMBARAN
SRI.K.RAVIKUMAR

RESPONDENTS: COMPLAINANT & STATE

---

1. ASSISTANT COLLECTOR CENTRAL EXCISE(PREVENTIVE)
COLLECTORATE OF CENTRAL EXCISE AND CUSTOMS,
COCHIN-18.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB
ASGI ADV. SRI.JOHN VARGHESE

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 15/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.396 of 2007

Dated this the 15th day of February, 2007

ORDER

The petitioners face indictment in a prosecution under the provisions of the Central Excise Act. Proceedings had been initiated as early as in 1993. Prosecution evidence was closed as early as on 15.05.2006. At a belated stage, the petitioners filed an application, a copy of which is produced as Annexure--III. The crucial averment in Annexure-III appears in para.1, which I extract below:

> "The petitioners herein are the accused Nos.1 and 3 in the above case. The case stands posted today for hearing. It is submitted that the prosecution has relied on the statements of accused and others to substantiate their case. The accused and others have retracted their statements. By an inadvertent omission the retracted statements have not been produced on the part of accused. Hence it is just and essential in the interest of justice that a further chance may be given to the accused to adduce evidence, failing which the accused will be highly prejudiced."
>
> (emphasis supplied)

The learned Magistrate by the impugned order, the relevant observations, which appear in para.2, which I extract below, rejected the application. The petitioners claim to be aggrieved by the said order.

> "Heard both sides. The prosecution evidence in this case is already closed on 15.05.06. So many

> postings are all and the case is posted for hearing both sides. It is only now such a petition is filed to adduce defence evidence by the accused. This is a case of the year 1993 and as so many chances have been given to the accused. I find this petition just to further protract and prolong the matter. Hence, it is dismissed."

2. As already stated, proceedings were initiated as early as in 1993. A reading of Annexure-III shows that the petitioners did not have any serious idea as to which specific document was to be relied on and what further evidence was to be adduced. The learned counsel for the petitioners submits that the petitioners do have copies of the said documents - retracted statements of the accused and others.

3. The matter stands posted for hearing to 17.02.2007, it is submitted. It is for the petitioners now to produce such documents on which they want to place reliance before the learned Magistrate and make a request to get them marked. I have no reason to assume that the learned Magistrate would not consider such a request in accordance with law and on merits. The learned Magistrate, I find, is justified in not permitting further protraction of the proceedings on the basis of the sweeping general statements made in Annexure-III.

4. This Crl.M.C is, in these circumstances dismissed, but with the observation that the petitioners can file a further application, if they have got the copies of the documents on which they want to

place reliance before the learned Magistrate. Appropriate orders on merit shall pass by the learned Magistrate.

5. Hand over a copy of this order to the learned counsel for the petitioner today itself.

(R.BASANT, JUDGE)

rtr/-